

REMARKS/ARGUMENTS

Claims 20-21, 24, 26, 28-31, and 35-38 are pending. No amendment is made to any of the pending claims. Reconsideration of the present application in view of the following remarks is respectfully solicited.

I. Obviousness rejection of claims 20-21, 24, 26, 28-31, 35-36, and 38

The Examiner maintains the rejection of claims 20-21, 24, 26, 28-31, 35-36, and 38 as being unpatentable under 35 U.S.C. § 103(a) over Roth et al (U.S. Patent No. 5,545,535) in view of Akai et al. (U.S. Patent No. 5,891,731) and Yue ST (U.S. Patent No. 5,656,449). We disagree.

Independent claim 20 recites a method of preparing an assay sample for detecting bacteria by a flow cytometer. The method comprises:

"providing a **diluent comprising** a cationic surfactant, a buffer for maintaining a pH of 2.0-4.5 and an effective amount of a substance capable of reducing nitrite ions and a **staining solution comprising** a polymethine dye for staining bacteria;

mixing a urine sample with the diluent; and

preparing the assay sample by mixing the mixture of the urine sample and the diluent with the staining solution. ... "

(Emphasis added.)

Another independent claims claim 38, which is directed to a method of staining bacteria, comprises the same steps as recited in claim 20. The remaining pending claims all depend from claim 20.

First, as explained in Applicants' previous response, none of the cited art discloses a step of providing a **diluent** as recited in the claims of the present application or a **step of mixing a urine sample with the diluent prior to the step of mixing the urine sample with a staining solution**. Indeed, none of the cited art provides any reason to do so. Unlike the present application, none of the cited art recognizes